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Attorney General of Hawaii

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Department of Attorney
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HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR,)	CASE NO. OSH 2009-39
DEPARTMENT OF LABOR AND)	(Inspection No. 311437784)
INDUSTRIAL RELATIONS,)	
)	STIPULATION AND SETTLEMENT
Complainant,)	AGREEMENT; EXHIBIT A; APPROVAL
)	AND ORDER
vs.)	
)	
C&S WHOLESALE GROCERS, INC. dba)	
HAWAII LOGISTICS,)	
)	
Respondent.)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and
Respondent C&S WHOLESALE GROCERS, INC. dba HAWAII LOGISTICS ("Respondent")
having reached a full and complete settlement of the above-captioned contested case presently
pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about June 1, 2009, the Director, by and through the State of Hawaii's
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located
at 91-315 Hanua Street, Kapolei, Hawaii, 96707.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on October 2, 2009 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$8,125.00. *See Exhibit A.*

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 91-315 Hanua Street, Kapolei, Hawaii, 96707.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.
5. The violations and corresponding characterizations as stated in the Citation are affirmed. *See Exhibit A.*
6. The Director reduces the aggregate penalty from \$8,125.00 to \$4,062.50 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement. In exchange for the reduction of the aggregate penalty Respondent has performed the following actions: (a) significantly revised its emergency action plan, including instituting new work rules and instituting new procedures addressing an anhydrous ammonia leakage response plan; and (b) retraining affected employees in its revised emergency action procedures

regarding the company's response to an accidental or uncontrolled release of anhydrous ammonia.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. If Respondent fails to fulfill any condition of this Agreement within the time stated, then, Respondent shall automatically and without further notice be liable for the entire original penalty in the amount of \$8,125.00. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.


9. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

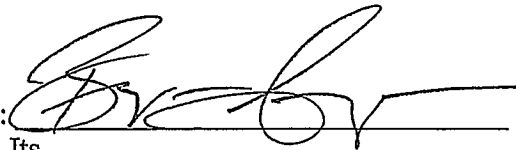
11. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any litigation or purpose other than proceedings under the Hawaii Occupational Safety and Health Law.

12. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.


13. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.


KEENE, NH
DATED: Honolulu, Hawaii, February 22, 2010.

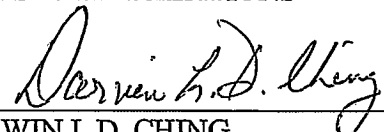
C&S WHOLESALE GROCERS, INC. dba HAWAII LOGISTICS

By: 
Its
VICE PRESIDENT - COMPLIANCE

APPROVED AS TO FORM:


HERBERT B.K. LAU
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

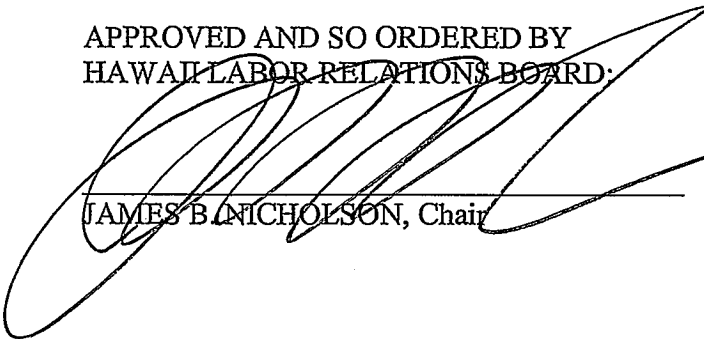
DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS


DARWIN L.D. CHING

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 377

DATED: March 8, 2010.


JAMES B. NICHOLSON, Chair


SARAH R. HIRAKAMI, Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7006 2150 0004 4122 0181

Citation and Notification of Penalty

To: C&S Wholesale Grocers Inc dba Hawaii Logistic Svc and its successors 91-315 Hanua St Kapolei, HI 96707	Inspection Number: 311437784 (Yunlin Huang) Inspection Date(s): 06/01/2009- 06/03/2009 Issuance Date: 10/02/2009 OSHC ID: Z5490 Optional Report No.: 0920 Inspection Type: Fatality/Catastrophe Scope of Inspection: Partial Inspection
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Inspection Site:
91-315 Hanua St
Kapolei, HI 96707

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related ~~to your inspection will be available 30 calendar days after the Citation Issuance Date.~~ You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

C&S Wholesale Grocers Inc dba Hawaii Logistic Svc
91-315 Hanua St
Kapolei, HI 96707

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on

10/02/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL
STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: C&S Wholesale Grocers Inc dba Hawaii Logistic Svc
Inspection Site: 91-315 Hanua St, Kapolei, HI 96707

Citation 1 Item 1 Type of Violation: Serious

HAR §12-60-2(a)(3) was violated because:

The employer did not provide safe work places by elimination or reduction of existing or potential hazards of anhydrous ammonia leakage.

§12-60-2(a)(3) states "Every employer shall provide safe work places and practices by elimination or reduction of existing or potential hazards. Elimination of existing or potential hazards by design, process substitution, or other appropriate methods is preferred because it eliminates the need for further employee protection. When elimination is not feasible, reduction of existing or potential hazards to acceptable levels, using methods such as engineering or administrative controls, isolation, or guarding, shall be promptly used. When these methods are inadequate to reach acceptable levels, personal protective equipment shall be provided and used."

Location: Establishment

Date By Which Violation Must be Abated:	11/04/2009
Penalty:	\$ 1,625.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: C&S Wholesale Grocers Inc dba Hawaii Logistic Svc
Inspection Site: 91-315 Hanua St, Kapolei, HI 96707

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.132(a) [Refer to chapter 12-64.1, HAR] was violated because:

The employer failed to provide protective eye, face, and skin equipment and chemically resistant protective clothing to the employees who were exposed to hazardous ammonia level during emergency.

29 CFR 1910.132(a) state "Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact."

Location: Establishment

Date By Which Violation Must be Abated:	11/04/2009
Penalty:	\$ 1,625.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311437784

Inspection Dates: 06/01/2009-06/03/2009

Issuance Date: 10/02/2009



Citation and Notification of Penalty

Company Name: C&S Wholesale Grocers Inc dba Hawaii Logistic Svc

Inspection Site: 91-315 Hanua St, Kapolei, HI 96707

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.132(d)(1)(i) [Refer to chapter 12-64.1, HAR] was violated because:

The employer failed to conduct an effective hazard assessment to determine that the use of self contained breathing apparatus or other appropriate respirators was necessary for the protection of the employees who worked at high hazardous ammonia atmosphere level during ammonia leakage accidents or other emergency.

29 CFR 1910.132(d)(1) & (d)(1)(i) state "The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall: Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;"

Location: Establishment

Date By Which Violation Must be Abated:

11/04/2009

Penalty:

\$ 1,625.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: C&S Wholesale Grocers Inc dba Hawaii Logistic Svc
Inspection Site: 91-315 Hanua St, Kapolei, HI 96707

The alleged violations below (4a & 4b) have been grouped because they involve similar or related hazards that may increase the potential for illness and injury.

Citation 1 Item 4a Type of Violation: **Serious**

29 CFR 1910.134(c)(1) [Refer to chapter 12-64.1, HAR] was violated because:

The employer did not establish and implement a written respiratory protection program with required worksite-specific procedures and elements. The employer's written respiratory protection program did not address certain procedures and elements necessary to protect the employees, including a selection of respirators for the emergency use in hazardous atmosphere at the immediately dangerous to life and health (IDLH) level.

29 CFR 1910.134(c)(1) state "In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions of this section, as applicable: (i) Procedures for selecting respirators for use in the workplace; (ii) Medical evaluations of employees required to use respirators; (iii) Fit testing procedures for tight-fitting respirators; (iv) Procedures for proper use of respirators in routine and reasonably foreseeable emergency situations; (v) Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators; (vi) Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators; (vii) Training of employees in the respiratory hazards to which they are potentially exposed during routine and emergency situations; (viii) Training of employees in the proper use of respirators, including putting on and removing them, any limitations on their use, and their maintenance; and (ix) Procedures for regularly evaluating the effectiveness of the program."

Location: Establishment

Date By Which Violation Must be Abated:

11/04/2009

Penalty:

\$ 1,625.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: C&S Wholesale Grocers Inc dba Hawaii Logistic Svc
Inspection Site: 91-315 Hanua St, Kapolei, HI 96707

Citation 1 Item 4b Type of Violation: **Serious**

29 CFR 1910.134(d)(2)(i) [Refer to chapter 12-64.1, HAR] was violated because:

~~The employer did not provide proper respiratory protection to the employee who worked in the room with hazardous atmosphere at immediately dangerous to life and health (IDLH) level.~~

29 CFR 1910.134(d)(2)(i) state "The employer shall provide the following respirators for employee use in IDLH atmospheres: (A) A full facepiece pressure demand SCBA certified by NIOSH for a minimum service life of thirty minutes, or (B) A combination full facepiece pressure demand supplied-air respirator (SAR) with auxiliary self-contained air supply."

Location: Establishment

Date By Which Violation Must be Abated:

11/04/2009



Citation and Notification of Penalty

Company Name: C&S Wholesale Grocers Inc dba Hawaii Logistic Svc
Inspection Site: 91-315 Hanua St, Kapolei, HI 96707

Citation 1 Item 5 Type of Violation: **Serious**

29 CFR 1910.134(c)(2)(ii) [Refer to chapter 12-64.1, HAR] was violated because:

Medical evaluations were not provided to the employees who were approved to voluntarily use the air purifying respirators for work.

29 CFR 1910.134(c)(2)(ii) state "In addition, the employer must establish and implement those elements of a written respiratory protection program necessary to ensure that any employee using a respirator voluntarily is medically able to use that respirator, and that the respirator is cleaned, stored, and maintained so that its use does not present a health hazard to the user. Exception: Employers are not required to include in a written respiratory protection program those employees whose only use of respirators involves the voluntary use of filtering facepieces (dust masks)."

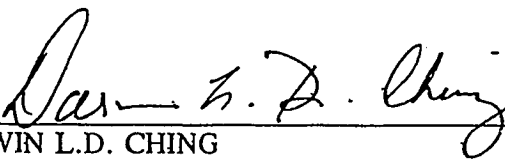
Location: Establishment

Date By Which Violation Must be Abated:

11/04/2009

Penalty:

\$ 1,625.00



DARWIN L.D. CHING
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: C&S Wholesale Grocers Inc dba Hawaii Logistic Svc
Inspection Site: 91-315 Hanua St, Kapolei, HI 96707
Issuance Date: 10/02/2009

Summary of Penalties for Inspection Number 311437784

Citation 1, Serious	= \$ 8,125.00
TOTAL PENALTIES	= \$ 8,125.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

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CERTIFIED MAILTM RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com
OFFICIAL USE

Health
 Postage \$ 1.22
 Certified Fee 2.80
 Return Receipt Fee (Endorsement Required) 2.30
 Restricted Delivery Fee (Endorsement Required)
 Total Postage & Fees \$ 6.32

311437784
 DOWNTOWN STN
 007
 Here
 2009
 USPS

Sent To
C&S Wholesale Grocers dba Hawaii Logist
 Street, Apt. No.,
 or PO Box No. **91-315 Hanua Street**
 City, State, ZIP+4
Kapolei, Hawaii 96707
 PS Form 3800, August 2006 See Reverse for Instructions

7006 2150 0004 4122 0181

10/26/09

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: **311437784**

Mr. Jim Warren, General Mgr.
C&S Wholesale Grocers Inc dba
Hawaii Logistics Svc.
91-315 Hanua Street
Kapolei, Hawaii 96707

2. Article Number
 (Transfer from service label) 7006 2150 0004 4122 0181

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 x *[Signature]* ☐ Agent
☐ Addressee

B. Received by (Printed Name)
[Signature] C. Date of Delivery
 10/26/09

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540